FILED
SEP 2 1942
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 367

C. LLOYD NEAL, Petitioner,

versus

LYKES BROS. RIPLEY STEAMSHIP CO., INC.,
CLAIMANT SS. DRYDEN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

And

BRIEF IN SUPPORT THEREOF.

ALEX W. SWORDS,
Attorney for the Petitioner.

R. A. DOWLING,
Of Counsel.

INDEX.

Page

Petition for Writ 1-3

Brief in Support of Petition 5-6

AUTHORITIES:

Cases:

Swanson v. Torry (C.C.A. Virginia 1928) 25 F. (2nd) 835 ..... 3, 6

The American Shipper, 70 F. (2nd) 632 ..... 3, 6

The Ella Pierce Thurlow, 18 F. (2) 675 6

The Sonderborg, 52 Sup. Ct. 7 2

Statutes:

Revised Statutes 4529 ..... 3, 6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

C. LLOYD NEAL, Petitioner,

versus

LYKES BROS. RIPLEY STEAMSHIP CO., INC.,
CLAIMANT SS. DRYDEN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

A.

This is a seaman's case for wages and penalties for non-payment of same without just cause. It is also for Maintenance during the period in which the wages were illegally withheld.

Petitioner was employed as a Steward on the SS. Dryden under Foreign Articles. He sailed from New Orleans to Liverpool, England. Upon arrival at Liverpool because of a complaint of the Officers, the Captain secured the permission of the American Consul and discharged the Steward. He was not given a hearing by the Consul.

34801

B.

The District Court held that the discharge was unwarranted, and that under the Shipping Articles the Petitioner was entitled to his wages, which had been withheld from him.

However, the District Court refused the Penalties which the law says should be given him. The petitioner claimed penalties from the date the wages were due, December 31st, 1937, to date; or in the alternative that he should be paid penalties from the date the suit was filed, February 19th, 1938.

C.

The petitioner was tried on the charges brought against him of incompetency growing out of this same matter by the U. S. Local Steamboat Inspectors and was acquitted of the charges. This trial was held on February 14th, 1938.

An appeal was taken to the United States Circuit Court of Appeals, Fifth Circuit, and the decision of the U. S. District Court for the Eastern District of Louisiana was affirmed.

A rehearing was timely applied for and refused.

The judgment of the District Court and of the United States Circuit Court of Appeals of the Fifth Circuit of the United States, refusing the penalties to this seaman, is in direct conflict with the decisions of this Court in the case of *The Sonderborg, 52 Sup. Ct. 7;* and

the Circuit Courts of Appeals in the cases of *Swanson v. Torry (C.C.A. Virginia 1928) 25 F. (2nd) 835; The American Shipper, 70 F. (2nd) 632; Revised Statutes 4529.*

WHEREFORE, because this is a seaman's case involving his unlawful and arbitrary discharge, and because he was illegally deprived of his wages; and because this case is in conflict with the law of the United States on the subject, and with the decisions above cited petitioner respectfully prays that a Writ of Certiorari or Review may issue out of and under the seal of this Honorable Court to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify, and send to this Court for review and determination, on a day therein to be named, a full and complete transcript of the Record and all proceedings in the matter, "C. LLOYD NEAL VS. SS. DRYDEN AND LYKES BROS. STEAMSHIP CO.," which is # 9948 of the said Court, and that the said decree and judgment of the said Circuit Court of Appeals of the Fifth Circuit of the United States may be amended by this Court and your petitioner may have such relief in the premises as this Court may deem just and fit.

ALEX W. SWORDS,
Attorney for the Petitioner.

R. A. DOWLING,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

C. LLOYD NEAL, Petitioner,

versus

LYKES BROS. RIPLEY STEAMSHIP CO., INC.,
CLAIMANT SS. DRYDEN.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF THE PETITIONER.

This case involves the right of a seaman, who was illegally discharged and his wages withheld from him on a foreign voyage to collect his wages and the penalties fixed by law.

We are attempting to have this Court amend the decree of the District Court of the Eastern District of Louisiana, and the decree of the United States Circuit Court of Appeals for the Fifth Circuit, which allowed the wages, but which refused the penalties.

The charge against the seaman was that he was incompetent as a Steward. The petitioner was tried by the Local Steamboat Inspectors of the United States at New Orleans and found *Not Guilty* of the charge.